

Final Order Denying Refund: 03-20191547R
Withholding Tax
For the Years 2012 through 2014 and 2017 through 2019

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana Business was not entitled to a refund of 2012, 2013, 2014, 2017, 2018, and 2019 withholding tax because it failed to substantiate that; (1) its refund request was timely and; (2) it had overpaid the tax. Indiana Business's earlier efforts to resolve the outstanding withholding tax issue did not provide the Department the information necessary to resolve that issue.

ISSUE

I. Withholding Tax - Refund Request.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-8-2; IC § 6-8.1-8-4; IC § 6-8.1-8-8; IC § 6-8.1-9-1; [45 IAC 15-9-2\(d\)](#); Commissioner's Directive 13 (October 2015).

Taxpayer argues that it is entitled to a refund of withholding tax it either erroneously paid to the Indiana Department of Revenue or was collected by the Department.

STATEMENT OF FACTS

Taxpayer is an Indiana business. Taxpayer is required to timely file and remit withholding tax payments on behalf of its employees.

Taxpayer filed a request for a refund of withholding tax. Taxpayer sought the refund because it determined it had either overpaid withholding tax during 2012, 2013, 2014, 2017, 2018, and 2019 or that the Department erroneously collected tax.

According to Taxpayer, the overpayments were attributable to levies placed on Taxpayer's bank account by the Indiana Department of Revenue's ("Department") collection agent. The collection agent took this step because Taxpayer failed to file withholding returns and - in the face of those missing returns - the Department had issued withholding tax assessments based on the "best information available" ("BIA"). Taxpayer failed to respond to the BIA assessments.

Thereafter, Taxpayer explains that it "filed a significant amount of missing returns on INTAX, most of which were zero filings." Taxpayer expected a return of money levied from Taxpayer's bank account or money which Taxpayer had paid. As Taxpayer explains, "Once the [taxpayer] filed the missing returns they thought they had asked for the payments to be applied to any [remaining] outstanding balances." Taxpayer's expectation was not met because - according to Taxpayer - the "funds were not applied to the outstanding balances."

Taxpayer then submitted two separate Claim for Refund (Form GA-110L) forms requesting the return of approximately \$8,800. The Department denied the refund in a letter dated August 2019. The letter explained the reason for denying the refund.

- No overpayments [exist] for periods of 2017, 2018, and 2019.
- The claim for refund was not filed within the time required by law . . . [f]or years 2012, 2013, and 2014

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Final Order Denying Refund results.

I. Withholding Tax - Refund Request.

DISCUSSION

The issue is whether Taxpayer has established that it is entitled to the refund of withholding tax on the ground that (1) its refund requests were timely filed and (2) it had overpaid the taxes for the years at issue.

A. Did Taxpayer Timely File the Refund Claim?

The Department's records show that pursuant to various tax warrants attributed to the BIA assessments, the collection agency on behalf of the Department, levied Taxpayer's bank account in 2015.

However, Taxpayer states that it has actually overpaid withholding tax. Taxpayer agrees that it originally failed to file and pay withholding tax and, in the absence of the returns, the Department assessed tax based on the "best information available." Taxpayer states that the Department's collection agent levied Taxpayer's bank account in an amount in excess of what was actually owed and that Taxpayer also erroneously paid withholding tax based on the Department's excessive BIA assessments.

In response to difficulties attributable to Taxpayer's failure to file the returns and the Department's efforts to collect the estimated liabilities, Taxpayer states that it contacted the Department in an effort to resolve the issue. Taxpayer also explains that the only reason the Form GA-110L request "was filed outside of [the] lawful time period because [its] original request was not processed through the INTAX portal and the Taxpayer was not aware of this"

The Department denied the \$8,800 refund on the ground that the Form GA-110L request was untimely. However, Taxpayer argues it had earlier raised the issue well within the three-year statute of limitations. Nonetheless, as to the GA-110L, the request was plainly untimely. IC § 6-8.1-9-1(a) provides as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

In this case, there is no question that the GA-110L Forms, dated July 2019, were not filed within the prescribed three-year window. The refund request was not filed within three years of the date the withholding returns were filed or the date the withholding payments were made.

However, Taxpayer explains that it is entitled to rely on its earlier efforts to resolve the issue with the Department which - according to Taxpayer - represented a timely refund request. On this question, the Department is unable to agree that the evidence provided by Taxpayer establishes that it provided the Department information sufficient to allow the Department to properly consider the request. Commissioner's Directive 13 (October 2015) provides:

The department's claim for refund form is Form GA-110L. The claim for refund must be filed using Form GA-110L. Alternatively, a refund may be claimed using an amended income tax return or a withholding tax return (Form WH-3) that indicates an overpayment of those respective taxes.

Further, [45 IAC 15-9-2](#)(d) requires:

When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) The amount of the refund claimed;
- (2) A sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;
- (3) The tax period for which the overpayment is claimed; and
- (4) The year and date the overpayment was made.

The free-form steps taken by Taxpayer to resolve the matter fail to meet the requirements set out in [45 IAC 16-9-2](#)(d) and IC § 6-8.1-9-1. See also *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263, 266 (Ind. Tax Ct. 2014) (explaining that "the person must file the claim with the [D]epartment within three (3) years after the latter of . . . [t]he due date of the return [or t]he date of payment. . . . Furthermore, the claim must include certain information such as the amount of the refund to which the person is entitled, the reasons why the person

is entitled to the refund, the tax period for which the overpayment is claimed, and the year and date of the overpayment [and] the claim for refund generally must be filed on the form prescribed by the Department").

The Department may not ignore the requirement that refunds be timely submitted on the form and in the manner required by the Department.

B. Did Taxpayer Have Overpayments for 2017, 2018, and 2019?

The Department denied Taxpayer's refund for 2017, 2018, and 2019 on the ground that Taxpayer did not have any overpayments to refund.

Taxpayer argued that it overpaid the tax because the Department levied Taxpayer's bank account pursuant to the excessive BIA assessments. As a result, Taxpayer believed that it was entitled to the refund after it filed zero returns.

IC § 6-8.1-5-1(b) states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

IC § 6-8.1-5-1(d) outlines the taxpayer's right to protest and request a hearing within a statutory due date. IC § 6-8.1-5-1(j) and (k) further detail that the department shall demand payment after certain statutory requirements are met. See *also* IC § 6-8.1-8-2.

IC § 6-8.1-8-4 further provides:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

IC § 6-8.1-8-8(1) further permits the Department to "levy upon the property of the taxpayer held by a financial institution" which does business within the State of Indiana.

After reviewing Taxpayer's protest and the Department's own records, the Department concludes as follows. Taxpayer was responsible for the collection costs incurred due to its failure to timely file and remit the withhold tax due, resulting in collections. Pursuant to the best information available at the time of the proposed assessments, the Department did what it was required to do. It sent Taxpayer notices, including BIA assessments and demands for payment for the Tax Years at Issue. Taxpayer did not respond to the proposed assessments within the statutory 60 days as explained on the proposed assessments (AR-80s). Because Taxpayer did not timely respond to the BIA assessments, subsequent notices were sent to Taxpayer to demand payment. The demand notices allowed Taxpayer 20 days to make the payments. The proposed assessments and subsequent demand notices were sent to Taxpayer's address by US Mail and were not returned to the Department. There is no evidence that the Department failed to do what it is required to do.

Finally, it should be noted that Taxpayer was notified again in September 2019 that Taxpayer had various outstanding withholding tax liabilities (including 2007, 2008, and 2017 tax years). These liabilities advanced to warrant collection stage and were beyond the scope of this protest.

FINDING

Taxpayers' protest is respectfully denied.

February 11, 2020

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